

SEP 23 2015



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**September 17, 2015**

Melecio Sotelo  
LKQ Pick Your Part  
880 Energy Way  
Chula Vista, CA 91911

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Pick-Your-Part Auto Wrecking, Inc  
National Registered Agents, Inc  
818 W. Seventh Street Ste 930  
Los Angeles, CA 90017

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter  
Pick Your Part Violations of General Industrial Permit**

Dear Mr. Sotelo:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Pick-Your-Part Auto Wrecking, Inc dba LKQ Pick Your Part ("Pick Your Part Owners and/or Operators") violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).<sup>1</sup> This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Pick Your Part (formerly Ecology Auto Parts), located at 880 Energy Way, Chula Vista, CA ("Facility" or "Pick Your Part"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Pick Your Part's Clean Water Act violations and CERF's intent to sue.

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<sup>1</sup> The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the General Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "General Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New General Industrial Permit."

**I. Coastal Environmental Rights Foundation (CERF)**

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Pick Your Part's ongoing illegal activities are discharged into Otay River, downstream to San Diego Bay, and eventually the Pacific Ocean.

The public and members of CERF use Otay River and San Diego Bay to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Pick Your Part Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Pick Your Part Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

**II. Storm Water Pollution and the General Industrial Permit**

**A. Duty to Comply**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Pick Your Part enrolled as a discharger subject to the New General Industrial Permit on June 5, 2015 and was enrolled under the General Industrial Permit beginning in 1996, WDID No. 9 371012114.

Pursuant to the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New General Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. (*Id.*). As an enrollee, Pick Your Part has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

**B. The Pick Your Part Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit**

Discharge Prohibition A(2) of the General Industrial Permit and Section III.C. of the New General Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such

**Notice of Intent to Sue: Clean Water Act**  
**Pick Your Part**  
**September 17, 2015**  
**Page 3**

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as the CTR or applicable Basin Plan water quality standards. (See New Industrial General Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Pick Your Part and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Pick Your Part SWPPP pursuant to section (C)(3).

The monitoring data for the Pick Your Part Facility indicates consistent, ongoing exceedances and violations of the General Industrial Permit. The Pick Your Part Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. Pick Your Part's sampling data reflects 62 discharge violations. Pick Your Part's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, for every single rain event the Pick Your Part Owners and/or Operators have monitored, the Facility has exceeded the CTR and benchmarks. At times, the exceedances for Aluminum and Iron have been as high as almost **192 and 208 times** the benchmark respectively. Similarly, the lead concentrations have routinely exceedanced the CTR maximum concentration limit, reaching concentrations as high as **44 times** the limit.

No.	Location	Date	Parameter	Units	Result	Benchmark/ WQO
1	Outfall A	12/11/2009	Aluminum	mg/L	87.3	.75
2	Outfall A	12/11/2009	Iron	mg/L	132	1
3	Outfall A	12/11/2009	Lead	mg/L	1.34	.065
4	Outfall A	12/11/2009	Oil & Grease	mg/L	75	15
5	Outfall A	12/11/2009	Specific Conductance	umhos/cm	957	200
6	Outfall A	12/11/2009	TSS	mg/L	2380	100
7	Outfall B	12/11/2009	Aluminum	mg/L	10.6	.75
8	Outfall B	12/11/2009	Iron	mg/L	14.7	1
9	Outfall B	12/11/2009	Lead	mg/L	.098	.065
10	Outfall B	12/11/2009	Specific Conductance	umhos/cm	1030	200
11	Outfall B	12/11/2009	TSS	mg/L	185	100
12	Outfall A	2/27/2010	Aluminum	mg/L	49.2	.75
13	Outfall A	2/27/2010	Iron	mg/L	68.9	1
14	Outfall A	2/27/2010	Lead	mg/L	.99	.065

**Notice of Intent to Sue: Clean Water Act**  
**Pick Your Part**  
**September 17, 2015**  
**Page 4**

15	Outfall A	2/27/2010	Specific Conductance	umhos/cm	687	200
16	Outfall A	2/27/2010	TSS	mg/L	1132	100
17	Outfall B	2/27/2010	Aluminum	mg/L	8.68	.75
18	Outfall B	2/27/2010	Iron	mg/L	13.1	1
19	Outfall B	2/27/2010	Lead	mg/L	.089	.065
20	Outfall B	2/27/2010	Specific Conductance	umhos/cm	629	200
21	Outfall B	2/27/2010	TSS	mg/L	192	100
22	Outfall A	11/4/2011	Aluminum	mg/L	80.1	.75
23	Outfall A	11/4/2011	Iron	mg/L	132	1
24	Outfall A	11/4/2011	Lead	mg/L	2.6	.065
25	Outfall A	11/4/2011	Specific Conductance	umhos/cm	698	200
26	Outfall A	11/4/2011	TSS	mg/L	2930	100
27	Outfall B	11/4/2011	Aluminum	mg/L	30.9	.75
28	Outfall B	11/4/2011	Iron	mg/L	51.1	1
29	Outfall B	11/4/2011	Lead	mg/L	.334	.065
30	Outfall B	11/4/2011	Specific Conductance	umhos/cm	640	200
31	Outfall B	11/4/2011	TSS	mg/L	1070	100
32	Outfall A	1/23/2012	Aluminum	mg/L	144	.75
33	Outfall A	1/23/2012	Iron	mg/L	208	1
34	Outfall A	1/23/2012	Lead	mg/L	3.37	.065
35	Outfall A	1/23/2012	Specific Conductance	umhos/cm	795	200
36	Outfall A	1/23/2012	TSS	mg/L	4630	100
37	Outfall B	1/23/2012	Aluminum	mg/L	59	.75
38	Outfall B	1/23/2012	Iron	mg/L	92.7	1
39	Outfall B	1/23/2012	Lead	mg/L	.556	.065
40	Outfall B	1/23/2012	Specific Conductance	umhos/cm	550	200
41	Outfall B	1/23/2012	TSS	mg/L	2330	100
42	Outfall A	2/2/2014	Aluminum	mg/L	59	.75
43	Outfall A	2/2/2014	Iron	mg/L	106	1
44	Outfall A	2/2/2014	Lead	mg/L	2.87	.065
45	Outfall A	2/2/2014	Zinc	mg/L	4.39	.12
46	Outfall A	2/2/2014	TSS	mg/L	2330	100
47	Outfall A	2/2/2014	Copper	mg/L	.899	.013
48	Outfall A	12/12/2014	Aluminum	mg/L	87.1	.75
49	Outfall A	12/12/2014	Iron	mg/L	154	1
50	Outfall A	12/12/2014	Lead	mg/L	2.61	.065
51	Outfall A	12/12/2014	Zinc	mg/L	9.26	.12
52	Outfall A	12/12/2014	TSS	mg/L	3380	100
53	Outfall A	12/12/2014	Copper	mg/L	1.28	.013
54	Outfall A	12/12/2014	Specific Conductance	umhos/cm	870	200
55	Outfall A	12/16/2014	Aluminum	mg/L	8.17	.75
56	Outfall A	12/16/2014	Iron	mg/L	12.3	1
57	Outfall A	12/16/2014	Lead	mg/L	.523	.065

58	Outfall A	12/16/2014	Zinc	mg/L	2.34	.12
59	Outfall A	12/16/2014	TSS	mg/L	566	100
60	Outfall A	12/16/2014	Copper	mg/L	.374	.013
61	Outfall A	12/16/2014	Specific Conductance	umhos/cm	800	200
62	Outfall A	12/16/2014	Oil & Grease	mg/L	21.6	15

Notably, the Facility has four discharge points (A-D), but only A and B are routinely sampled. Discharge point C was not sampled because “operations conducted there are also conducted by the area that drains to Outfall B” and “Outfall D is not sampled because it drains a remote and relatively small are of the facility.” (2011-2012 Annual Report, Attachment 1). Although this is inconsistent with the new June 2015 SWPPP sampling protocol, it does indicate that at times when Outfall B showed exceedances, they were likely also present at Outfall C. Further, as reflected in the June 2015 SWPPP, industrial activity occurring at Outfall D is “similar in nature to the industrial activities that occur on Drainage Areas B and C.” (June 2015 SWPPP, p. 36). Therefore, exceedances at Outfall B not only indicate additional exceedances at Outfall C, but also Outfall D. Thus, the number of discharge violations reflected above is an underestimate.

Every day Pick Your Part Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit and New General Industrial Permit is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Pick Your Part Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since Pick Your Part’s enrollment and prior to such enrollment in light of Pick Your Part’s industrial operations at the Facility prior to its enrollment. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permits.

### **C. Inadequate Storm Water Pollution Prevention Plan**

One of the main requirements of the General Industrial Permit (and New General Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New General Industrial Permit, Finding I.54, §X). Pick Your Part has not developed an adequate SWPPP as required by the Permits.

Despite the consistent and continuous water quality violations established by Pick Your Part’s monitoring data, the SWPPP BMPs have not been updated to address such exceedances. Although the Facility has implemented a series of barriers to direct flow and IBC tote settling and treatment trains, those BMPs have not resulted in improved water quality. (See June 2015 SWPPP, pp. 20-21; 2013-2014 Annual Report, Forms 4 and 5 [reflecting tote filtering system was under construction in June 2014 and boom barrier was under construction in February 2014]). Thus, additional BMPs are necessary to address the Facility’s historical numerous and extremely high exceedances of water quality standards. (See Section B, above). The Facility SWPPP therefore fails to identify and describe the BMPs necessary to achieve compliance with the New Industrial Permit. (New Industrial Permit, §X.C.1.b, c).

In addition, the June 2015 SWPPP fails to identify the Chula Vista MS4 or the Otay River as the nearby water body and municipal storm drain inlets that receive the Facility’s



industrial storm water discharge. (New Industrial Permit, §X.E.3.a).

Every day the Pick Your Part Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the General Industrial Permit, the New General Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Pick Your Part Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit since at least September 17, 2010. These violations are ongoing and the Pick Your Part Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the Pick Your Part Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

### **III. Remedies**

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Pick Your Part must develop and implement a SWPPP which complies with all elements required in the New General Industrial Permit, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the Pick Your Part Owners and/or Operators fail to do so, CERF will file an action against Pick Your Part for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day. CERF may further seek a court order to prevent Pick Your Part from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

### **IV. Conclusion**

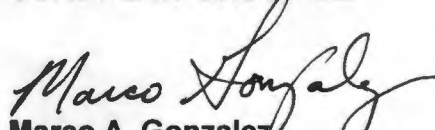
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

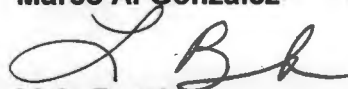
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

**COAST LAW GROUP LLP**

  
**Marco A. Gonzalez**



**Livia Borak**  
Attorneys for  
Coastal Environmental Rights Foundation

CC:

<b>Jared Blumenfeld, Region 9 Administrator</b> <b>Alexis Strauss, Deputy Regional Administrator</b> <b>U.S. EPA, Region 9</b> <b>75 Hawthorne Street</b> <b>San Francisco, CA, 94105</b>	<b>Dave Gibson, Executive Officer</b> <b>Catherine Hagan, Staff Counsel</b> <b>San Diego Regional Water Quality Control Board</b> <b>2375 Northside Drive, Suite 100</b> <b>San Diego, CA 92108-2700</b>
<b>Gina McCarthy</b> <b>EPA Administrator</b> <b>Mail Code 4101M</b> <b>USEP A Ariel Rios Building (AR)</b> <b>1200 Pennsylvania Avenue N.W.</b> <b>Washington, DC 20004</b>	<b>Thomas Howard</b> <b>Executive Director</b> <b>State Water Resources Control Board</b> <b>P.O. Box 100</b> <b>Sacramento, CA 95812-0110</b>

